



**Stanbic Bank Kenya Limited v Asige t/a Asige Kiverenge & Anyanzwa Advocates  
(Civil Appeal 222 of 2022) [2025] KEHC 12143 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 12143 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL 222 OF 2022**

**F WANGARI, J**

**MAY 22, 2025**

**BETWEEN**

**STANBIC BANK KENYA LIMITED ..... APPELLANT**

**AND**

**JAPHETH ASIGE T/A ASIGE KIVERENGE & ANYANZWA  
ADVOCATES ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. Nyariki J. delivered on the  
24th day of November, 2022 in CMCC No. E325 of 2020 at Mombasa)*

**JUDGMENT**

1. The suit in the lower court was instituted by the Respondent/ Plaintiff against the Appellant/ Defendant vide the Plaint dated 06/11/2020. It was averred that pursuant to an order made in Mombasa HCCC No. 49 of 2006, the Respondent jointly with Musinga and Company Advocates opened a fixed deposit interest earning account with the Appellant.
2. The principal sum was Kshs. 1,000,000/= with an interest rate of 11.75% per annum and was to be rolled over during the term until termination or closure of the account.
3. Vide the order dated 07/10/2020 issued in the above mentioned matter, the account was closed. The Appellant was issued with the order to have the funds released. After much delay, the Appellant paid to the Respondent Kshs. 1,031,133.50 instead of the expected Kshs. 1,773,131.50 being the principal sum and interest earned.
4. The Appellant was alleged to have closed the fixed deposit interest earning account and opened a current account which was against the court order and its contractual and fiduciary obligation to the Respondent. The Respondent prayed for judgment against the Appellant for Kshs 741,998/= being the loss suffered in the withheld interest, damages for breach of agreement and costs of the suit.



5. The Appellant filed the Statement of Defence dated 09/12/2020. The contents of the Plaintiff were denied and the Plaintiff put to strict proof thereof. I was stated that the Respondent fixed the Kshs. 1,000,000/= in an interest earning account for 6 months with an interest of 11.5% per annum.
6. Upon maturity, the Respondent opted to have the money paid into business current account, which attracted a fee of Kshs. 400/= per month. The accrued interest less withholding tax was Kshs 49,800/=. The Appellant sought to have the Respondent's suit dismissed with costs.
7. Upon hearing the parties, the court delivered its judgment on 24/11/2022 which was in favour of the Respondent for Kshs. 741,998/= being interest due, Kshs 100,000/= as damages for breach of agreement and costs of the suit. The Appellant being dissatisfied with the said judgment filed this appeal. The Appellant faulted the trial court for failing to consider the evidence adduced by the Appellant thus arriving at a decision that was contrary to the facts and evidence tendered.
8. It was directed that the appeal be disposed of by way of written submissions wherein both parties complied by filing detailed submissions together with various authorities in support of the parties' rival positions.

### **Analysis and Determination**

9. I have considered the said submissions together with the authorities relied upon by the parties as well as the law and in my respectful view, the issues for determination are;
  - a. Whether the appeal has merits.
  - b. Who should pay the costs.
10. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (See *Selle vs Associated Motor Boat Company Ltd* [1968] EA 123 and *Peters vs Sunday Post Limited* [1985] EA 424 where in the latter case, the court therein rendered itself as follows: -

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”
11. It has not been disputed that the Respondent deposited Kshs. 1,000,000/= with the Appellant bank. The money was first deposited in the Enterprise/ Business Account No. 100004182434, on 03/11/2015. Thereafter, the Respondent filled the Fixed Deposit Instruction Form dated 03/11/2025. The amount to be fixed was Kshs. 1,00,000/= for a period of 6 months.
12. Both the Appellant and the Respondent in their pleadings states that the interest rate applicable was 11.75% per annum. The dispute arises as to whether after the expiration of the 6 months, the fixed amount was to be rolled over or it was to be paid in the business current account no. 100004182434.
13. I have perused through the Fixed Deposit Instruction Form (pg. 19 and 60 of R.O.A). even though most of the hand written page is faint, I note that the money was fixed for 6 months.
14. In pg. 64, it shows the applicable fixed deposit rates effective 03/11/2015. This is the date the money was fixed. The Respondent having opened a business account, the applicable rate for business banking fixed deposit was 11.75% for the 6 months period.



15. From the above document, I have not seen the paragraph upon which the Respondent gave the option to have the deposit be paid to the business account. Nothing would have been easier for the Appellant than to point out specifically where the instructions were issued by the Respondent.

16. I have perused through the Terms and Conditions for Fixed Deposit Account at pg. 61. Clause 4 (iii) provides as follows;

Maturity

(iii) “In the absence of any express maturity instructions the bank share rolled over the monies held in your names into a new fixed deposit account for the same term as the maturing deposit and at the prevailing bank interest rate at the rate of its maturity”.

17. From the above, there being no proof that there were express maturity instructions, the money was to rollover to a new fixed deposit account and the same terms and conditions would apply to the subsequent fixed deposits. The parties are therefore bound by the terms of their contract unless there is proof of coercion, fraud or undue influence. (See National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] eKLR).

18. The Respondent is well entitled to the interest at 11.75% per annum with the fixed deposit rollover upon maturity until the time the account was closed. I find the appeal on the issue has got no merits.

19. As to the award of damages for breach of contract, the same is discretionary. The appellate court can only interfere with the award if the discretion was wrongly exercised, was based on no evidence and irrelevant facts were considered. (See Mbogo & Another v Shah [1968] EA 93).

20. Upon perusal of the lower court judgment, I find no basis for the award of the general damages. The trial magistrate did not give reasons as to why the same was awarded. Under the circumstances, the award is hereby set aside.

21. The appeal having been partially successful, each part to bear its own costs.

22. Following the foregone discourse, the upshot is that the following orders do hereby issue: -

- a. The appeal on award of interest is hereby dismissed.
- b. The appeal on award of general damages is hereby upheld, and the award of Kshs. 100,000 is hereby set aside.
- c. Each party to bear its own costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22<sup>ND</sup> DAY OF MAY, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of;

Mr. Wafula Advocate for the Appellant

Mr. Asige Advocate for the Respondent



M/S Norah, Court Assistant

